IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.910 OF 2003
IN
CHAMBER SUMMONS NO.235 OF 2003
IN
PETITION NO.222 OF 1993
IN
SUIT NO.54 OF 1993

Pradeep Manek Shahani ....Appellant

V/s.

Rajendrakumar Shahani ....Respondent
Ori.Pet.

And

Nanik H. Mirchandani & Anr. ....Respondent
Ori.Caveators & Defts.

Mr.Robin Jaisinghania i/b Basant Tilokani & Co. for the Appellant.

Mr.H.V. Chande for Respondent No.1.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 10TH MARCH, 2005.

P.C. :

1. By consent the Appeal is admitted and taken up for final hearing.

2. The Appeal is filed against the order of the learned single Judge rejecting the Appellant's

application dismissing the caveat filed by Respondent Nos.1 and 2. Respondent No.1 filed the above Petition for probate of the last Will and Testament of one Smt.Ruki Mirchandani alias Ruki G. Mirchandani dated 7th December, 1988. The Appellant is the sole beneficiary under the said Will.

3. The Appellant is the son of the brother of the deceased. Respondent Nos.1 and 2, the caveators are the children of the brother of the husband of the deceased.

4. Respondent Nos.1 and 2 filed the caveat and an affidavit in support thereof which we shall shortly refer to. Respondent No.1/original Petitioner took out the above Chamber Summons No.235 of 2003 for an order discharging the said caveat.

5. It is settled law that in a Petition for probate the Court is not concerned with the title to the properties mentioned therein. In *Ishwardeo Narain Singh v. Kamta Devi, A.I.R. 1954 S.C. 280.* The Supreme Court held as under :-

> "2. The dismissal of the application for probate on the ground that the disposition in favour of Thakurji is void for

> uncertainty can on no principle be supported and indeed learned counsel appearing for the respondent has not sought to do so. The Court of Probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind.The question whether a particular bequest is good or bad is not within the purview of the Probate Court. ....."

6. The only contention raised in support of the caveat is that the husband of the deceased was the owner of a property known as "Gurdasmal Mansion" situated at Bandra, Mumbai. The deceased and her husband had no children. It is further alleged that Gurdasmal during his life time has executed a Will dated 8th December, 1957 wherein he had bequeathed the said property in favour of the caveators and that the deceased had only a right of residence during her life time and that she was also entitled for cash and moveable property and rent and income of the above immovable property.

7. Even assuming that the case of the caveators in this regard is correct, it would make no difference so far as the present proceedings are concerned. Suffice it to note that there is no challenge

whatsoever to the Will of the deceased. We have gone through the entire affidavit in support of the caveat. The only question raised is the power of the deceased to bequeath the said property. This is an issue which cannot be decided for the reason that it pertains to a challenge to the title, which cannot be decided in the present case.

8. The learned single Judge refused to discharge the caveat on the ground that the caveators have contended that the deceased could not have willed away the property in favour of the Petitioner in view of the aforesaid Will. The learned single Judge held that in view of the said contention, it cannot be said that there is no challenge to the Will with regard thereto. We are unable to agree. The challenge to the Will is a matter which different from a challenge to the capacity of the deceased to bequeath the properties referred to therein.

9. Needless to add that the discharge of the caveat or even grant of the probate, if any, will not affect the title of the caveators, if any. Nor will it affect the rights of the caveators to contend that the deceased had no title to the said property.

10. In the circumstances, the Appeal is allowed. Caveat filed by Respondent Nos.1 and 2 is dismissed with no order as to costs.